

**City of New York
Office of Administrative Trials and Hearings**

Notice of Promulgation of Rule

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the Office of Administrative Trials and Hearings (OATH) in accordance with Sections 1049 and 1043 of the New York City Charter that OATH amends chapter 7 of title 48 of the Rules of the City of New York, concerning the community service program established by OATH pursuant to subdivision 4 of section 1049 of the New York City Charter.

The proposed rule was published in *The City Record* on March 20, 2019, and a public hearing was held on April 23, 2019. No one attended or testified at the public hearing concerning this rule and OATH did not receive any written comments.

Statement of Basis and Purpose of Final Rule

The Office of Administrative Trials and Hearings (OATH) amends section 7-01, subdivisions (a) and (b) of section 7-02, section 7-03, and section 7-05 of Chapter 7 of Title 48 of the Rules of the City of New York, concerning OATH's community service program established by section 1049(4) of the New York City Charter (City Charter). In addition, OATH renumbers sections 7-06 and 7-07 as sections 7-07 and 7-08, respectively, and adds a new section 7-06 to such Chapter.

OATH began offering community service to eligible respondents in June 2017 as part of the Criminal Justice Reform Act (Local Law 73 for the year 2016). The New York City Council passed the Criminal Justice Reform Act (CJRA) to create the opportunity for civil enforcement of low-level, non-violent offenses. This legislation was enacted on June 13, 2016. As part of the CJRA, Local Law 73 added new provisions to section 1049 of the City Charter that require OATH Hearing Officers to offer an option to perform community service in lieu of paying a monetary civil penalty for certain specified violations of the Administrative Code of the City of New York and certain violations of rules of the Department of Parks and Recreation (DPR). A respondent is eligible to complete community service if they have either admitted to a specified violation before a hearing or if a specified violation was sustained against them after a hearing. A table of specified violations can be found in § 7-02 below.

Currently, respondents may only complete community service in-person, including a one-hour e-learning (learning which is conducted on a computer) course administered at an OATH Hearings Division location. Commencing in the summer of 2019, respondents will have the option to fulfill a one- or two-hour community service requirement by completing an online Community Service course from any computer. The amendments describe the procedures by which respondents may now complete community service either before or after a hearing, including the process by which respondents can admit to a Specified Violation by completing the online Community Service course, on or before the hearing date.

The amendments to section 7-01 remove the definition of "community service provider" since OATH is now managing the community service program. The amendments to section 7-02

clarify that a respondent may now admit to a specified violation before the hearing date without appearing before a hearing officer.

The amendments also relocate the provisions that govern community service extensions from subdivisions (c) and (d) of section 7-05 to a new section 7-06, and clarify that extensions do not apply to respondents who wish to admit to the Specified Violation by completing the online Community Service course. Due to the creation of a new section 7-06, former sections 7-06 and 7-07 are renumbered.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Section 7-01, subdivisions (a) and (b) of section 7-02, section 7-03, and section 7-05 of Chapter 7 of Title 48 of the Rules of the City of New York are amended to read as follows:

§ 7-01 Definitions.

As used in this chapter:

“Community Service” means the performance of a service for a public entity or not-for-profit corporation, association, institution, or agency, in place of payment of a monetary civil penalty. Performance of a service may include attendance at a program, either in person or web-based, authorized by OATH that is designed to benefit, improve, or educate either the community or the Respondent. Community Service includes OATH’s online community service course, which may be completed to satisfy a one- or two-hour Community Service requirement.

[“Community Service Provider” is an entity contracted by OATH to manage Community Service.]

“Decision” is a decision of a Hearing Officer sustaining or dismissing a charge and containing findings of fact and conclusions of law.

“Hearing Officer” means a person designated by the Chief Administrative Law Judge of OATH, or his or her designee, to carry out the adjudicatory powers, duties and responsibilities of OATH.

“Respondent” means a person against whom charges are alleged in a summons.

“Specified Violations” are the violations specified in New York City Charter section 1049(4)(b), and set forth in § 7-02(a) below.

§ 7-02 Eligibility for Community Service.

(a) Except as provided in subdivision (c), a Respondent who admits the charge on or before a hearing date or is found responsible [at] after a hearing for any Specified Violation can perform

Community Service instead of paying a monetary civil penalty. The Specified Violations, monetary civil penalties, and corresponding Community Service hour requirements are found below:

Citation in Summons	Description in Summons	Citation Monetary Penalty	Community Service Hour Requirement
Admin. Code § 10-125	Public Consumption of Alcohol	Up to \$25	1
56 RCNY § 1-05(f)(1)	Unauthorized consumption/possession of alcoholic beverage	\$25	1
56 RCNY § 1-05(f)(2)	Appearing in park under the influence of alcohol, endangering self or others	\$50	1
Admin. Code § 16-118(1)(a), (b)	Littering, Sweep-out, throw-out, spitting	1st - \$75 2nd - \$300 3rd - \$400	1st - 1 2nd - 2 3rd - 3
56 RCNY § 1-04(c)(1)	Littering or unlawful use of park waste receptacle	\$50	1
Admin. Code § 16-118(6)	Public Urination	1st - \$75 2nd - \$250 3rd - \$350	1st - 1 2nd - 2 3rd - 3
56 RCNY § 1-03(a)(3)	Unauthorized presence in park when closed to public	\$50	1
56 RCNY § 1-03(b)(6)	Failure to have/display/comply with required permit	\$50	1
56 RCNY § 1-03(c)(1)	Failure to comply with directives of police, park supervisor, lifeguard, peace officer	\$250	2
56 RCNY § 1-03(c)(2)	Failure to comply with directives of other Department employee	\$150	2
56 RCNY § 1-03(c)(3)	Failure to comply with directions/prohibitions on signs	\$50	1
56 RCNY § 1-04(a)(1)	Destruction or abuse of Department property that causes significant damage or expense	\$1,000	6
56 RCNY § 1-04(a)(2)	Injury, defacement, abuse, etc. of Department property	\$100	1
56 RCNY § 1-04(b)(1)(ii)	Defacement or writing upon a tree	\$200	2
56 RCNY § 1-04(b)(1)(iii)	Defacement, killing, etc. of vegetation.	\$200	2
56 RCNY § 1-04(b)(2)	Walking on/permitting animal or child to walk on newly seeded grass	\$50	1

Citation in Summons	Description in Summons	Citation Monetary Penalty	Community Service Hour Requirement
56 RCNY § 1-04(b)(3)	Walking/permitting animal or child to walk in fenced area	\$50	1
56 RCNY § 1-04(b)(4)	Unauthorized possession of gardening tool/plant	\$50	1
56 RCNY § 1-04(b)(5)	Unauthorized use of metal detector	\$50	1
56 RCNY § 1-04(c)(4)	Storing/leaving unattended personal belongings	\$50	1
56 RCNY § 1-04(d)	Possession of glass container	\$50	1
56 RCNY § 1-04(e)(1)	Aviation - bringing/landing aerial device in park, endangering person or property	\$500	3
56 RCNY § 1-04(f)(1)	Possession of a firearm/propellant/explosive etc.	\$500	3
56 RCNY § 1-04(g)(1)	Harming animals, nests, or eggs; Possessing or distributing animals or eggs.	\$1,000	6
56 RCNY § 1-04(g)(2)	Unauthorized feeding of animals	\$50	1
56 RCNY § 1-04(i)	Unleashed/uncontrolled animals in park	\$100	1
56 RCNY § 1-04(i)	Unleashed/uncontrolled animals in park – second or subsequent violation within one year	\$250	2
56 RCNY § 1-04(j)(1), § 3-18(b)	Failure to remove canine waste	\$100	1
56 RCNY § 1-04(j)(2)	Horse carriage without horse hamper/control for horse waste	\$100	1
56 RCNY § 1-04(k)	Unlawful urination/defecation in park.	\$50	1
56 RCNY § 1-04(l)(1)	Disorderly behavior – unauthorized access/trespass	\$50	1
56 RCNY § 1-04(l)(2)(i)	Disorderly behavior – climbing	\$50	1
56 RCNY § 1-04(l)(2)(ii)	Disorderly behavior – climbing statue or artwork in manner that could damage it	\$200	2
56 RCNY § 1-04(l)(3)	Disorderly behavior – fee evasion	\$50	1
56 RCNY § 1-04(l)(4)	Disorderly behavior – gambling	\$50	1
56 RCNY § 1-04(l)(5)(i)	Disorderly behavior – render park road dangerous	\$100	1

Citation in Summons	Description in Summons	Citation Monetary Penalty	Community Service Hour Requirement
56 RCNY § 1-04(l)(5)(ii)	Disorderly behavior – render park dangerous	\$50	1
56 RCNY § 1-04(l)(6)	Disorderly behavior – fighting/assault	\$150	2
56 RCNY § 1-04(l)(7)	Disorderly behavior – sexual activity	\$100	1
56 RCNY § 1-04(l)(8)	Disorderly behavior – endanger safety of others	\$250	2
56 RCNY § 1-04(l)(9)	Disorderly behavior – operation of bike, motor vehicle, etc. that endangers safety of other person or property	\$500	3
56 RCNY § 1-04(n)	Unlawful exposure	\$50	1
56 RCNY § 1-04(o)	Obstruction of benches, sitting areas	\$50	1
56 RCNY § 1-04(p)	Unlawful camping	\$250	2
56 RCNY § 1-04(q)	Spitting on park building/monument/structure	\$50	1
56 RCNY § 1-04(r)	Unauthorized use of fountain/pool/water for personal/animal hygiene	\$50	1
56 RCNY § 1-04(s)(1)	Unlawful commercial activity or speech	\$100	1
56 RCNY § 1-04(s)(2)	Soliciting money or property without permit	\$50	1
56 RCNY § 1-05(a)(1)	Unpermitted event that significantly interferes with ordinary park use	\$500	3
56 RCNY § 1-05(a)(2)	Unpermitted special event/demonstration	\$250	2
56 RCNY § 1-05(a)(3)	Structure/stand/booth etc. without permit	\$250	2
56 RCNY § 1-05(b)	Unlawful vending	\$250	2
56 RCNY § 1-05(b)(1)	Unlawful vending – second or subsequent violation within one year	\$500	3
56 RCNY § 1-05(b)(2)	Unlawful vending of expressive matter in violation of Department rules	\$500	3
56 RCNY § 1-05(c)	Unlawful display of signs	\$50	1
56 RCNY § 1-05(d)(1)	Unreasonable noise	\$50	1
56 RCNY § 1-	Operating sound reproduction	\$140	1

Citation in Summons	Description in Summons	Citation Monetary Penalty	Community Service Hour Requirement
05(d)(2)	device without required permit		
56 RCNY § 1-05(d)(3)	Playing instrument/radio, etc. during unauthorized hours	\$140	1
56 RCNY § 1-05(g)	Failure to comply with beach/boardwalk/pool restrictions	\$50	1
56 RCNY § 1-05(h)	Failure to comply with fishing restrictions	\$50	1
56 RCNY § 1-05(i)	Failure to comply with bicycle riding and/or pedicab restrictions	\$50	1
56 RCNY § 1-05(i)(1)	Failure of pedicab or bike operator to comply with sign	\$150	2
56 RCNY § 1-05(k)(1)	Failure to comply with ice skating restrictions	\$50	1
56 RCNY § 1-05(k)(2)	Going upon a frozen lake or pond without authorization	\$50	1
56 RCNY § 1-05(l)	Planting tree/flower/shrubbery/other vegetation without written approval	\$50	1
56 RCNY § 1-05(m)(1)	Failure to comply with fire restrictions	\$50	1
56 RCNY § 1-05(m)(2)	Unlawful disposal of flammable materials	\$50	1
56 RCNY § 1-05(n)	Unauthorized driving/parking/automotive work	\$50	1
56 RCNY § 1-05(q)	Failure to comply with horse riding restrictions	\$50	1
56 RCNY § 1-05(r)(1)	Area use restrictions - sports in unauthorized area	\$50	1
56 RCNY § 1-05(r)(2)	Area use restrictions - unauthorized toy or model aviation, boating, automobiling, etc.	\$50	1
56 RCNY § 1-05(r)(3)(i)	Area use restrictions - unauthorized skating/skiing/skateboarding/sledding/etc. endangering person or property	\$200	2
56 RCNY § 1-05(r)(3)(ii)	Area use restrictions - unauthorized skating/skiing/skateboarding/sledding, etc.	\$50	1
56 RCNY § 1-05(s)(1)	Failure to comply with exclusive children playground restriction	\$50	1

Citation in Summons	Description in Summons	Citation Monetary Penalty	Community Service Hour Requirement
56 RCNY § 1-05(s)(2)	Failure to comply with exclusive senior citizen area restrictions	\$50	1
56 RCNY § 1-05(s)(3)	Failure to comply with dog run restrictions	\$50	1
56 RCNY § 1-05(t)	Unauthorized distribution/demonstration of products	\$100	1
56 RCNY § 1-05(u)	Failure to comply with in-line skating restrictions	\$50	1
Admin. Code § 24-218(a)	Causing or permitting unreasonable noise (7 A.M. to 10 P.M.)	1st - \$75 2nd - \$150 3rd - \$350	1st - 1 2nd - 2 3rd - 3
	Causing or permitting unreasonable noise (10 P.M. to 7 A.M.)	1st - \$75 2nd - \$150 3rd - \$350	1st - 1 2nd - 2 3rd - 3

(b) A Respondent is eligible for Community Service if the Respondent [appears in person before a Hearing Officer and] admits to a Specified Violation alleged in a summons before a hearing date, or if the Specified Violation is sustained [at] after a hearing. [Respondent need not opt for community service at the time of the hearing] A Respondent may admit to a Specified Violation at a hearing, in which case the Specified Violation will be sustained against the Respondent.

§ 7-03 Choosing Community Service.

(a) [A Respondent eligible for Community Service as set forth in § 7-02 of this chapter will receive a Decision that gives Respondent the option either to complete Community Service by a specified date or to pay the applicable monetary civil penalty. If the Respondent wants to perform Community Service, the Respondent must contact the Community Service Provider to schedule Community Service] Community Service After a Hearing.

(1) If a Respondent is eligible for Community Service because the Specified Violation is sustained after a hearing as described in § 7-02 of this chapter, the Respondent will receive a Decision that gives the Respondent the option either to complete Community Service or to pay the applicable monetary civil penalty by a specified date. If the Respondent wants to complete Community Service, the Respondent may contact OATH's Help Center to schedule Community Service. If the Decision gives the option to complete one or two-hours of Community Service, the Respondent may complete OATH's online Community Service course.

[(b)] (2) If [the] a Respondent fails to complete the Community Service as set forth in §§ 7-04 and 7-05 of this chapter, the applicable monetary civil penalty will be reinstated. The monetary civil penalty will be due and owing thirty (30) days from the date of the Decision, or thirty-five (35) days if the Decision is mailed.

(b) Admitting by Completing OATH's Online Community Service Course On or Before a Hearing Date.

(1) A Respondent who wants to admit to a Specified Violation that has a one- or two-hour community service requirement in accordance with § 7-02 of this chapter will have the option of admitting to the Specified Violation by completing OATH's online Community Service course on or before the hearing date. The completion of the online Community Service course constitutes an admission to the violation.

(2) If a Respondent fails on or before the hearing date to complete OATH's online Community Service course or pay the applicable monetary penalty, and does not appear at the hearing, the Respondent will be in default pursuant to § 6-20 of chapter 6 of title 48 of the rules of the city of New York.

§ 7-05 Completion of Community Service.

(a) A Respondent must complete either the Community Service assigned by [the Community Service Provider] OATH's Help Center or, if applicable, OATH's online Community Service course.

(b) Deadline to Complete Community Service.

(1) [A] If a Respondent [must complete the] is completing Community Service after a hearing was held, the Community Service must be completed by the date specified in the Decision, unless otherwise specified in a notice granting an extension, or an order issued pursuant to § 7-07.

(2) If a Respondent is admitting by completing OATH's online Community Service course, the online Community Service course must be completed on or before the hearing date.

(c) [A Respondent may request an extension of time to complete the Community Service through the Community Service Provider prior to the deadline to complete the Community Service specified in the Decision.

(1) The Community Service Provider may grant a request for an extension for good cause shown. In determining whether there is good cause for an extension, the Community Service Provider will consider factors such as the following:

- (A) The length of extension requested;
- (B) The number of hours of Community Service to be completed and the amount of the monetary civil penalty that would be due;
- (C) The number of prior extensions requested;
- (D) Whether the need for the extension is due to factors beyond Respondent's control or due to extraordinary circumstances; and
- (E) Whether a portion of the Community Service has been completed.

(2) A denial of a request for an extension is not subject to appeal.

(3) A request for extension of time to complete Community Service will not extend the date by which a Respondent must pay the monetary civil penalty. If a request for an extension is denied, the Respondent must either complete the Community Service by the date specified in the Decision, or pay the applicable monetary civil penalty thirty (30) days from the date of the Decision or thirty-five (35) days if the Decision is mailed.

(d)] Certificate of Completion.

(1) Within two (2) days after the specified date of completion in a Decision, a notice granting an extension, or an order issued pursuant to § 7-07, the Help Center must provide to Respondent either:

(A) a Certificate of Completion indicating that the Community Service was completed by the specified date; or

(B) a Certificate of Non-Completion indicating that the Community Service was not completed by the specified date.

(2) If a Respondent completes OATH's online Community Service course, the Respondent will receive immediate confirmation that the online Community Service course was completed.

[(e)] (d) If a Respondent who either receives a Certificate of Non-Completion, or does not receive immediate confirmation that the online Community Service course was completed, believes that [he or she has] they have timely completed Community Service, [he or she] they may contact OATH's Clerk's Office. The Clerk's Office will review any information or documentation submitted in support of Respondent's claim that Community Service was completed on time. The burden of proof is on the Respondent to show timely completion of the Community Service. If the Clerk's Office finds that Community Service was completed on time, Respondent will not have to pay the monetary civil penalty.

§ 2. Sections 7-06 and 7-07 of chapter 7 of Title 48 of the Rules of the City of New York are renumbered sections 7-07 and 7-08, respectively, and a new section 7-06 is added to such chapter to read as follows:

§ 7-06 Extension to Complete Community Service.

(a) A Respondent may request an extension of time to complete the Community Service through the Help Center prior to the deadline to complete the Community Service specified in the Decision.

(b) Extensions of time to complete Community Service are not available for Respondents who wish to admit to the Specified Violation by completing OATH's online Community Service course on or before the hearing date.

(c)(1) OATH's Help Center may grant a request for an extension to complete Community Service for good cause shown. In determining whether there is good cause for an extension, the Help Center will consider factors such as the following:

- (A) The length of extension requested;
- (B) The number of hours of Community Service to be completed and the amount of the monetary civil penalty that would be due;
- (C) The number of prior extensions requested;
- (D) Whether the need for the extension is due to factors beyond Respondent's control or due to extraordinary circumstances; and
- (E) Whether a portion of the Community Service has been completed.

(2) A denial of a request for an extension is not subject to appeal at OATH.

(3) A request for extension of time to complete Community Service will not extend the date by which a Respondent must pay the monetary civil penalty. If a request for an extension is denied, the Respondent must either complete the Community Service by the date specified in the Decision, or pay the applicable monetary civil penalty thirty (30) days from the date of the Decision or thirty-five (35) days if the Decision is mailed.



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Hon. Fidel Del Valle
Commissioner
Office of Administrative Trials and Hearings

Re: Amendment of Community Service Program Rules

No. 2019 RG 009

Dear Commissioner Del Valle:

Pursuant to New York City Charter § 1043 subd. c, the above-referenced rule has been reviewed and determined to be within the authority delegated by law to your agency.

Sincerely,

A handwritten signature in blue ink that reads "Steven L. Goulden".

STEVEN GOULDEN
Senior Counsel
Division of Legal Counsel

cc: Simone Salloum (OATH)